

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 7th of August, 2024
Pronounced on 21st August, 2024**

Regular Second Appeal No.1056 of 1994

Kehar Singh and others

....Appellants

Versus

Satnam Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Jain, Senior Advocate with
Mr. Sandeep Punchhi, Advocate and
Mr. Anupam Mathur, Advocate for the appellants.

Mr. P.K. Ganga, Advocate
for the respondents.

PANKAJ JAIN, J.

Defendants are in second appeal. Defendants/appellants are the subsequent vendors aggrieved of decree of specific performance granted in favour of the plaintiffs.

2. For convenience, the parties herein after are referred to by their original position in the suit i.e. the defendants as the appellants and the respondents as the plaintiffs.

3. Plaintiffs filed suit seeking decree of specific performance of agreement to sell dated 31st of March, 1986 pertaining to suit land

described in the plaint ad-measuring 14 Kanals 16 Marlas. It was pleaded by the plaintiffs that defendant No.1 entered into an agreement to sell suit land in their favour on 31st of March, 1986 for a valuable consideration of Rs.30,500/-. At the time of agreement to sell, she received Rs.10,000/- as earnest money. Possession of the suit land was delivered on the spot. Parties agreed to get the sale deed executed on or before 30th of March, 1987 on payment of balance sale consideration. However, prior to the agreed date, on 16th of October, 1986 defendant No.1 executed sale deed pertaining to the suit land in favour of defendants No.2 and 3. Plaintiffs always remained ready and willing to perform their part of the contract as per the terms & conditions contained therein. Legal notice was served upon defendant No.1 by the plaintiffs through their counsel to get the sale deed executed. It was further claimed that defendants No.2 and 3 are real cousins of the plaintiffs. Land of defendants No.2 and 3 was situated abutting the suit land and defendants No.2 and 3 were in the knowledge that the possession of the land has been delivered to the plaintiffs, yet in order to defeat rights of the plaintiffs they got the sale deed executed in their favour.

4. Defendant No.1 contested the suit and denied execution of agreement to sell. She admitted receipt of Rs.10,000/- but only as a

debt and claimed that she being an illiterate lady executed papers in token of receipt of loan from the plaintiffs. She claimed that she sold the land to defendants No.2 and 3 and handed-over possession to them on the spot.

5. Defendants No.2 and 3 also contested the suit claiming ownership over the suit land on the strength of registered sale deed dated 16th of October, 1986 executed in their favour by defendant No.1 for a valuable consideration of Rs.44,000/-. It was claimed that the possession of the suit land stands delivered to them on the date of sale deed and thus they are in actual physical possession of the same.

6. On the basis of the pleadings of the parties, Trial Court framed the following issues:

- “1. Whether the defendant No.1 contracted to sell the suit land to the plaintiffs vide agreement dated 31.3.86 as alleged? OPP.
2. If issue No.1 is proved, whether plaintiffs are entitled to the possession of the suit land by way of specific performance of contract dated 31.3.86? OPP.
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
4. Whether plaintiffs have no cause of action to file the present suit? OPD.
5. Whether the plaintiffs have no locus-standi to bring the present suit? OPD.

6. Whether the proceedings of the present suit are liable to be stayed u/s 10 of CPC as alleged? OPD.
7. Whether the defendants No.2 and 3 are bonafide purchasers of the suit land for consideration and without notice as alleged, if so what effect? OPD.
8. Relief.”

7. Trial Court while deciding issues No.1, 2 and 7 held that the execution of agreement to sell in favour of the plaintiffs dated 31st of March, 1986 was proved. However, Trial Court found that the recital w.r.t. handing-over of possession of the suit land by defendant No.1 in favour of the plaintiffs is factually incorrect and it is defendants No.2 and 3 who were handed-over possession of the suit land by defendant No.1. Holding that the possession of the suit land was never delivered to the plaintiffs on 31st of March, 1986 at the time of execution of the same and rather the same was handed-over to defendants No.2 and 3 on execution of the sale deed, Trial Court held defendants No.2 and 3 to be the *bona fide* purchasers. Trial Court thus, held that the plaintiffs were not entitled for decree of specific performance. Trial Court decreed the suit filed by the plaintiffs against defendant No.1 for alternate relief of recovery of Rs.10,000/- along with interest @ 12% per annum from the date of advancement till the

date of decree and with an interest @ 6% from the date of decree till actual realization.

8. Plaintiffs preferred appeal. Defendant No.1 opted not to file any appeal against the judgment and decree passed by the Trial Court.

8.1. Lower Appellate Court came to the conclusion that the Trial Court erred in disbelieving the recital w.r.t. delivery of the possession of the suit land as contained in agreement to sell Exhibit P-3. Trial Court without any reason discarded the testimony of Sher Singh (PW-7) who admittedly was in possession of the suit land at the time of agreement to sell. Plaintiffs claimed that the possession of the suit land was handed over to them by aforesaid Sher Singh and the aforesaid fact has been lent credence by the testimony of Sher Singh yet the Trial Court erred in returning findings on Issues No.2 and 7. Lower Appellate Court thus while reversing the findings recorded by the Trial Court on issues No. 2 and 7 answered the same in favour of the plaintiffs and decreed their suit for the main relief of specific performance.

9. Ld. Counsel for the appellants while assailing the impugned judgment and decree submits that the lower Appellate Court erred in ignoring the stand taken by defendant No.1 Ganga Devi. The

agreement to sell was result of a loan transaction between the plaintiffs and defendant No.1 and possession of suit land was never handed-over to the plaintiffs at the time of execution of the agreement to sell dated 31st of March, 1986. Testimony of PW-7 Sher Singh, who is real brother of defendants No.2 and 3, has been wrongly relied upon despite there being evidence on record that Sher Singh and the appellants were at loggerheads and were in the thick of *lis*. It has been further claimed that the suit filed by the plaintiffs was barred under Order 2 Rule 2 CPC. Plaintiffs filed suit on 22nd of October, 1986 seeking declaration to be a proposed vendee under the alleged agreement to sell and challenged the sale deed in favour of the appellants without seeking decree of specific performance. Reliance has been placed upon the law laid down by Supreme Court in the case of '**M/s Virgo Industries (Eng.) P. Ltd. vs. M/s. Venture Tech Solutions P. Ltd.**' (2013) 1 SCC 625.

10. I have heard counsel for the parties and have gone through the records of the case.

11. In the considered opinion of this Court so far as the issue w.r.t. execution of agreement to sell dated 31st of March, 1986 is concerned, both the Courts below concurrently found that the same was executed by Ganga Devi in favour of the plaintiffs for sale of the suit

land. Suit was decreed against Ganga Devi though for alternate relief. Ganga Devi opted not to file appeal against the decree. Thus, it is too late in the day for the appellants to assail the same. The appellants have not propounded any agreement to sell prior in time to the agreement to sell propounded and proved by the plaintiffs. Section 19 of the Specific Relief Act, 1963 deals with relief against the parties and persons claiming under them by subsequent title. The same reads as under:

“9. Relief against parties and persons claiming under them by subsequent title.— Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

12. In view of above, the only issue that requires consideration of this Court is: *whether the appellants can be held to be the bona fide purchasers of the suit land or not?*

13. It is not in dispute that the land in question abuts the land of the appellants. Parties to the *lis* belong to the same village. The plaintiffs claim that the possession of the suit land was handed-over to them and the defendants No.2 and 3 i.e. the appellants had knowledge of the agreement to sell. This Court while dealing with somewhat similar situation in '**Dr. Govind Dass vs. Shanti Bai**', 1972 PLR 227 held that the knowledge of an agreement to sell executed in favour of one party is known to the inhabitants of the same village. Here not only the parties are of the same village but also belong to the same family and own adjoining lands.

14. In view of above, this Court does not find any reason to hold that the appellants can be held to be *bona fide* purchasers and thus entitled to resist the claim of the plaintiffs seeking decree of specific performance.

15. So far as the plea w.r.t. the suit being barred by Order 2 Rule 2 CPC is concerned, the same is misconceived. Admittedly, the target date as per the agreement to sell for execution of sale deed was 30th of March, 1987. Plaintiffs filed earlier suit in October, 1986. The

judgment relied upon by the appellants themselves negates their plea.

Apex Court in *M/s Virgo Industries' case* (supra) held as under :

“10. The object behind enactment of Order 2 Rule 2 (2) and (3) of the Civil Procedure Code is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order 2 Rule 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment of the Constitution Bench of this Court in *Gurbux Singh v. Bhooralal, AIR 1964 Supreme Court 1810* may be usefully recalled below :

"In order that a plea of a bar under Order 2, Rule 2 (3), Civil Procedure Code should succeed the defendant who raises the plea must make out(1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief,(3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later

suit is based there would be no scope for the application of the bar."

The above principles have been reiterated in several later judgments of this Court. Reference by way of illustration may be made to the judgments *Deva Ram & Anr. v. Ishwar Chand & Anr.*, 1995(3) R.R.R. 717 : 1995 (6) SCC 733 and *M/s. Bengal Waterproof Ltd. v. M/s Bombay Waterproof Manufacturing Co.& Anr.*, AIR 1997 Supreme Court 1398.

11. The cardinal requirement for application of the provisions contained in Order 2 Rule 2(2) and (3), therefore, is that the cause of action in the later suit must be the same as in the first suit. It will be wholly unnecessary to enter into any discourse on the true meaning of the said expression, i.e. cause of action, particularly, in view of the clear enunciation in a recent judgment of this Court in the *Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*, 2012(3) Recent Apex Judgments (R.A.J.) 600 : 2012(3) RCR (Civil) 811 : JT 2012(6) SC 149. The huge number of opinions rendered on the issue including the judicial pronouncements available does not fundamentally detract from what is stated in Halsbury's Law of England, (4th Edition). The following reference from the above work would, therefore, be apt for being extracted hereinbelow:

"Cause of Action" has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular action the part of the defendant which gives the plaintiff his cause of complaint, or the subject-

matter of grievance founding the action, not merely the technical cause of action."

16. Thus, the earlier suit filed by the plaintiffs at the time when the cause of action to seek specific performance had not materialized in their favour, cannot be read to defeat their subsequent suit applying principle of constructive *res judicata*.

17. As a sequel of the discussion held hereinabove, this Court does not find any reason to interfere in the present appeal. Consequently, the same is ordered to be dismissed.

August 21, 2024	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned :	Yes
Whether reportable :	Yess